IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

FRIDAY, THE 23RD MARCH 2007 / 2ND CHAITHRA 1929

OP.No. 8222 of 2003(D)
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PETITIONER:
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N.NANU, GOVT. CONTRACTOR,
`USHUS', VADAKARA.

BY ADV. SRI.BABU JOSEPH KURUVATHAZHA

RESPONDENTS:
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1. STATE OF KERALA,
REP. BY ITS SECRETARY TO GOVERNMENT,
DEPARTMENT OF IRRIGATION, GOVT. SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE EXECUTIVE ENGINEER,
CAD DIVISION, PERAMBRA, KOZHIKODE DISTRICT.

BY ADV.SMT.SMITHA, GOVERNMENT PLEADER

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 23/03/2007, ALONG WITH O.P.NOS. 10843/2003 & 11322/2003, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P.No. 8222/2003

ORDER ON CMP 14322/2003 IN O.P.No. 8222/2003

DISMISSED.

23/03/2007 SD/- (C.N.RAMACHANDRAN NAIR, JUDGE)

**APPENDIX**

PETITIONER'S EXHIBITS

P1 : COPY OF THE REQUEST OF THE PETITIONER DATED 09/10/2002 FOR EXTENSION OF TIME FOR THE EXECUTION OF THE WORK.

P2 : COPY OF THE ORDER BEARING NO. D3-3471/98 DATED 30/1/2003 ISSUED BY THE 2ND RESPONDENT.

P3 : COPY OF THE ORDER IN CMP NO. 37678/2000 IN O.P.No. 22378/2000 DATED 07/08/2000 OF THIS HON'BLE COURT.

// TRUE COPY //

PA TO JUDGE

jg

**C.N.RAMACHANDRAN NAIR, J.**

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**O.P. Nos. 8222, 10843 & 11322 of 2003**

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**Dated, this the 23rd day of March, 2007**

**J U D G M E N T**

Petitioner is challenging penalty levied for granting extension of time for completion of the contract. The learned Govt. Pleader conceded that contract does not provide for extension of time. However PWD manual provides for extension of time even on account of default on the part of the contractor, on payment of fine, which is proportionate to the period of extension of time sought for. As per Govt. Order No. 84/97/PWD dated 19/8/97, fine is levied @ 1% of the PAC subject to a minimum of Rs. 300 and maximum of Rs. 15,000/-. If the time extension applied for and granted is up to three months beyond grace period, the fine for extension of time for every three months beyond the first three months is 2% of PAC subject to a minimum of Rs. 600/- and a maximum of Rs. 30,000/-. It is specifically mentioned that extension of time applied for and granted to the petitioner is not attributable to departmental default. When the contractor applies for extension of time, it implies that he is willing to comply with the conditions based on which such extension of time can be granted. Admittedly, the contract does not provide for extension of time and extension of time is granted in

terms of clause contained in PWD manual as above, which provides for extension only on payment of fine. Therefore, if the petitioner applied for extension of time, there is an implied condition to pay the fine, without which the respondents have no authority to extend the time. Besides this, if time was not applied for and granted, then the respondents were entitled to cancel the contract and rearrange the work at the risk and cost of the contractor. Therefore by getting extension of time, even on payment of fine petitioners are gainers in as much as the alternative was cancellation of contract and rearrangement of work at contractor's own risk and cost. In the circumstance, and after availing the extension of time, I do not think petitioners are entitled to challenge the condition on which extension was granted i.e. payment of fine in accordance with PWD manual. In the circumstance, these OPs are devoid of any merit and are accordingly dismissed upholding recovery of fine.

**(C.N.RAMACHANDRAN NAIR, JUDGE.)**

jg